IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 31ST AUGUST 2007 / 9TH BHADRA 1929

WP(C).No. 26233 of 2007(W)

PETITIONER:

MS. EXCEL TIMBERS PVT. LIMITED,
PETTA, FEROKE, CALICUT, BY MANAGING DIRECTOR,
V.MAMMU.

BY ADV. SRI.P.RAGHUNATH
SRI.PREMJIT NAGENDRAN

RESPONDENTS:

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1. THE INTELLIGENCE OFFICER (IB),
COMMERCIAL TAXES, KOLLAM.

2. THE DEPUTY COMMISSIONER (APPEALS),
KOLLAM.

3. INSPECTING ASST. COMMISSIONER,
COMMERCIAL TAXES, KOZHIKODE.

BY GOVT. PLEADER, SRI.K.P.PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 31/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V..GIRI, J

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W.P.(C) No.26233 of 2007

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Dated this the 31st day of August, 2007

JUDGMENT

The petitioner, a dealer in timber was proceeded against under Sec.45A of the KGST Act on the ground that Form 18 declarations issued to him were actually bogus. An order of penalty was passed by the 1st respondent as per Ext.P4. The petitioner has preferred Ext.P6 revision before the 2nd respondent-the Deputy Commissioner (Appeals), Kollam and has also moved an application for stay - Ext.P7 therein. The learned Government Pleader points out that Ext.P6 seems to have been preferred before the Deputy Commissioner (Appeals), Kollam, who is not a designated revisional authority in relation to an order of penalty passed by the 1st respondent-Intelligence Officer (IB).

2. The learned counsel for the petitioner points out that pursuant to the direction issued by this Court in writ petition No.33646 of 2005, the Commissioner of Commercial Taxes has nominated the Deputy Commissioner (Appeals), Kollam as the competent authority to hear revisions against orders imposing penalty passed by any authority under the Act, in relation to the series of transactions which was

considered by this Court in the said writ petition.

3. Apparently the question as to whether the 2nd respondent is competent to hear the revision against Ext.P5 order is a matter to be looked into by the 2nd respondent himself. Obviously, at his risk, the petitioner seems to have preferred the revision before the 2nd respondent.

4. I have heard the learned counsel for the petitioner as also the learned Government Pleader on behalf of the respondents. I am of the view that since a statutory revision has been preferred along with an application of stay, the revisional authority must consider the same. It is necessary in the interest of justice that the 2nd respondent should consider and pass orders on Ext.P7-petition for stay within a time frame.

5. In the result this writ petition is disposed of directing the 2nd respondent to consider and pass orders on Ext.P7 petition for stay within a period of three weeks from today. He may consider whether the revision has been preferred before the appropriate authority and further whether revision has been preferred within the time prescribed under the Statute or within the extended time granted by this Court in W.P.(C) No.24566 of 2007. Until orders are passed on Ext.P7

application for stay as aforementioned, further proceedings for recovery of the amount imposed as penalty under Ext.P5 order of penalty shall be kept in abeyance. The petitioner shall produce a copy of this judgment before the 2nd respondent, within one week from today to enable the 2nd respondent to comply with the directions issued above.

(V.GIRI, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE